

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edwin Peña	Team: Team # 1	CCRB Case #: 200503117	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 03/17/2005 4:00 PM	Location of Incident: the corner of § 87(2)(b) and § 87(2)(b)		Precinct: 34	18 Mo. SOL 9/17/2006	EO SOL 9/17/2006
Date/Time CV Reported Thu, 03/24/2005 12:34 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/24/2005 12:34 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Juan Hernandez	03610	902705	034 PCT
2. POM Fabio Nunez	01432	925839	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Juan Rosario	02989	926034	034 PCT
2. POM Kenneth Woznicki	31838	891247	034 PCT
3. POM Rene Salcedo	03638	933318	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Juan Hernandez	Force: Sgt. Juan Hernandez used physical force against § 87(2)(b)	
B.POM Fabio Nunez	Force: PO Fabio Nuñez used physical force against § 87(2)(b)	
C.POM Fabio Nunez	Abuse: PO Fabio Nuñez threatened § 87(2)(b) with the use of force.	

Synopsis

On March 24, 2005, § 87(2)(b) contacted the CCRB to report that on March 17, 2005, he sustained a fractured left shoulder during the course of his arrest by Sgt. Juan Hernandez and PO Fabio Nuñez, who are assigned to the 34th Precinct, as he stood on the corner of § 87(2)(b) and § 87(2)(b) in Manhattan. Sgt. Hernandez and PO Nuñez testified that they only used the minimal amount of physical force necessary in order to subdue § 87(2)(b) who was resisting arrest (Allegations A and B) and only became aware of his injury on the way to the stationhouse. § 87(2)(g)

§ 87(2)(b) claimed that PO Nuñez threatened to use physical force against him while they were being treated inside the § 87(2)(b) emergency room. (Allegation C) § 87(2)(g)

Summary of Complaint

On § 87(2)(b) at approximately 5:44 p.m., § 87(2)(b) was admitted to the § 87(2)(b) under police custody complaining of pain in his left shoulder. It is indicated in the evaluation sheet that § 87(2)(b) stated that his left shoulder was “snapped” by a police officer. The medical records did not include the ambulance call report. (Encl. 6A)

Notice of claim

§ 87(2)(b) filed a notice of claim (Encl. 7A-7C) with the City of New York against the New York Police Department on § 87(2)(b) for a total of \$10,000,000 in damages. According to the notice of claim, § 87(2)(b) was arrested without just cause. This document does not provide details regarding this incident.

§ 87(2)(b) was interviewed by the CCRB on April 20, 2005. (Encl. 8A-8C) § 87(2)(b) is a § 87(2)(b) Hispanic male.

On March 17, 2005, at approximately 3:55 p.m., § 87(2)(b) walked out of § 87(2)(b) in Manhattan along with § 87(2)(b) and § 87(2)(b) and they proceeded to walk to the corner of § 87(2)(b) and § 87(2)(b) and § 87(2)(b) met § 87(2)(b) and § 87(2)(b) in front of § 87(2)(b) which is located at § 87(2)(b). § 87(2)(b) stated that these individuals do not wish to cooperate with this investigation. As § 87(2)(b) spoke with the aforementioned individuals, he observed that Sgt. Juan Hernandez and PO Fabio Nuñez were driving along § 87(2)(b) in a marked police vehicle. § 87(2)(b) stated that on June 2004, he was arrested by Sgt. Hernandez and “processed through the court system without being charged with a crime.” Upon making eye contact with Sgt. Hernandez, § 87(2)(b) noticed that the marked police vehicle made a “U-turn” and the officers parked in front of the furniture store. From inside the marked police vehicle, which was parked approximately ten feet away from § 87(2)(b) Sgt. Hernandez asked him if he did not like “to be looked at in the street.” § 87(2)(b) asked Sgt. Hernandez, “Don’t you have anything better to do?” § 87(2)(b) turned his back to Sgt. Hernandez and in a loud tone of voice he told his friends, “This cocksucker has nothing better to do.”

Sgt. Hernandez approached § 87(2)(b) and asked him to provide identification. Without hesitation, § 87(2)(b) provided Sgt. Hernandez with his driver’s license. When Sgt. Hernandez returned to his vehicle, § 87(2)(b) once again told his friends, “This cocksucker has nothing better to do.” At this point, Sgt. Hernandez ran out of his vehicle, grabbed § 87(2)(b) by his right arm and placed him against the marked police vehicle. Sgt. Hernandez placed § 87(2)(b) s right arm behind his back while stating, “Stop resisting. If you keep resisting I’m going to break your arm.” § 87(2)(b) denied resisting at any point. At the same time, PO Nuñez approached § 87(2)(b) and placed his left arm behind his back. When Sgt. Hernandez told § 87(2)(b) that he could break his arm if he continued to resist, PO Nuñez said, “Oh, break his arm” and applied pressure on the left arm, pushing it upward, causing his shoulder to “snap.” § 87(2)(b)

§ 87(2)(b) claimed that a small group of unidentified individuals who were standing approximately sixty feet away from the scene heard “the snap.” § 87(2)(b) stated that he collapsed to the ground because of the pain. § 87(2)(b) stated that he repeatedly yelled profanities at Sgt. Hernandez and PO Nunez as he was being handcuffed. Sgt. Hernandez and PO Nuñez picked him up off the ground and placed him inside the marked police vehicle. On the way to the stationhouse, § 87(2)(b) told Sgt. Hernandez and PO Nuñez, “You motherfuckers broke my arm. I did not do nothing to you.” Sgt. Hernandez told § 87(2)(b) “Now you can sue.”

Upon arriving at the stationhouse, PO Nuñez presented § 87(2)(b) to the desk officer who was described as a black male. § 87(2)(b) claimed that he was made to sit on the floor in front of the precinct’s main desk, “like a dog,” for approximately thirty minutes, before he was evaluated by two Emergency Medical Technicians. § 87(2)(b) stated that he was transported to § 87(2)(b) for further evaluation and PO Nuñez acted as his escorting officer.

While in the emergency room, § 87(2)(b) and PO Nuñez found themselves alone in a private room. § 87(2)(b) stated that he began to curse at PO Nuñez, who warned him that he could take him to another room and break his other arm. § 87(2)(b) claimed that this exchange lasted approximately thirty minutes. At one point, an unidentified officer, whom § 87(2)(b) described as a white male told § 87(2)(b) “Take it easy with Nuñez. He is a big guy.”

Results of Investigation

Efforts to locate additional witnesses

On April 7, 2005, the investigator went to § 87(2)(b), which is located at § 87(2)(b) in Manhattan. This establishment is located on the opposite side of the street from where this incident took place. The employees stated that they did not have any knowledge of this incident. The investigator also spoke with employees of § 87(2)(b) which is located at § 87(2)(b). According to § 87(2)(b)’s arrest report, the incident took place in front of this establishment. The employees from this store also denied any knowledge of this incident. (Encl. 11A)

In an attempt to locate witnesses to this incident, on April 26, 2005, the investigator conducted a second canvass of the place of occurrence. However, this attempt was also met with negative results. (Encl. 11B)

On August 4, 2005, the CCRB interviewed EMT § 87(2)(b). EMT § 87(2)(b) was the emergency medical technician who transported § 87(2)(b) to the § 87(2)(b). (Encl. 10A-10C) § 87(2)(g)

Complaint report

Complaint report # § 87(2)(b) lists PO Juan Rosario as § 87(2)(b)’s arresting officer. It is indicated in this report that § 87(2)(b) was arrested and charged with preventing a police officer (PO Nuñez) from performing a lawful arrest. It also indicated that PO Nuñez sustained injuries to his left ankle and right shoulder. (Encl. 12A-12C)

Aided Report

This report indicates that during the course of § 87(2)(b)’s arrest, PO Nuñez sustained injuries to his left leg and right shoulder. (Encl. 13A-13E)

PO Fabio Nuñez

PO Nuñez was interviewed by the CCRB on April 28, 2005. (Encl. 16A-16B) On March 17, 2005, PO Nuñez was assigned as Sgt. Juan Hernandez’s operator from 11:30 a.m. to 8:05 p.m. PO Nuñez performed his duties in uniform. PO Nuñez has a brief entry in his memo book regarding this incident. (Encl. 15A-15B)

At approximately 4:00 p.m., PO Nuñez and Sgt. Hernandez were conducting routine patrol along § 87(2)(b) in Manhattan, when the officers observed a group of approximately five Hispanic males standing at the northwest corner of § 87(2)(b) and § 87(2)(b). PO Nuñez indicated that because this corner is known to be a drug-prone location, Sgt. Hernandez instructed him to tell the group to disperse from this corner. After PO Nuñez requested that these individuals walk away from the corner and they complied. At this point, the officers drove away from the scene. Approximately twenty minutes later, the officers were conducting routine patrol along § 87(2)(b) when they observed the same individuals standing at the same location. When PO Nuñez told the group to walk away from the corner as previously instructed, § 87(2)(b) stated, “Fuck you.” Based on this act by § 87(2)(b), PO Nuñez made a U-turn, parked the marked police vehicle and the officers walked towards § 87(2)(b). PO Nuñez indicated that they were going to approach § 87(2)(b) in order to issue him a disorderly conduct summons based on his refusal to walk away from the corner and the profanity that he had yelled at the officers.

When the officers instructed § 87(2)(b) to walk towards them, § 87(2)(b) turned his back to the officers and continued to talk to his friends. At this point, Sgt. Hernandez and PO Nuñez decided to approach § 87(2)(b) in order to get him away from his friends in order to issue him the summons. Because § 87(2)(b) had refused to comply with the officers’ request that he walk towards them, Sgt. Hernandez grabbed him by his right arm and placed it behind his back. At the same time, § 87(2)(b) attempted to punch PO Nuñez, who had approached him on his left side, with his left arm. PO Nuñez indicated that § 87(2)(b) did not hit him and he was able to get a hold of his left arm and place it behind his back. At this point, PO Nuñez and Sgt. Hernandez physically guided § 87(2)(b) to the side of their marked police vehicle. PO Nuñez indicated that § 87(2)(b) refused to walk towards the vehicle. Once § 87(2)(b) was placed on the side of the vehicle, the officers repeatedly told him to stop resisting. After struggling to handcuff § 87(2)(b) for approximately one minute, PO Nuñez was able to do so. PO Nuñez denied deliberately applying force to § 87(2)(b)’s arm in order to get him to comply. PO Nuñez also denied that either he or Sgt. Hernandez threatened to break § 87(2)(b)’s arm if he failed to allow them to handcuff him. PO Nuñez stated that during the course of the arrest, he sprained his left ankle. Once § 87(2)(b) was handcuffed, PO Nuñez observed that a crowd of approximately thirty individuals had gathered at the scene and began to yell profanities towards them. Concerned for their safety, the officers placed § 87(2)(b) inside the marked police vehicle and immediately drove away.

On the way to the 34th Precinct stationhouse, § 87(2)(b) complained to the officers that his “arm” was broken. At this point, Sgt. Hernandez requested over division radio that an ambulance meet the officers at the stationhouse. § 87(2)(b) repeatedly cursed at the officers and told them that he would be filing a lawsuit. The officers did not reply to § 87(2)(b). Sgt. Hernandez and PO Nuñez escorted § 87(2)(b) into the stationhouse and notified an unidentified desk officer of the events that had transpired during the course of § 87(2)(b)’s arrest. Within a few minutes, two Emergency Medical Technicians arrived at the stationhouse and examined § 87(2)(b) who was subsequently transported to the § 87(2)(b) for further evaluation. PO Nuñez stated that he also went to this hospital in the same ambulance as § 87(2)(b) so he could be examined for a sprained ankle and pain in his right shoulder. PO Nuñez indicated that PO Juan Rosario escorted him to the hospital.

Once at the hospital, PO Nuñez stated that he limited his interaction with § 87(2)(b) to just asking him pedigree information in order to prepare the arrest report, which would eventually be assigned to another officer. PO Nuñez stated that PO Rosario witnessed this exchange, in which he did not use profanity towards § 87(2)(b). PO Nuñez denied threatening to use force against § 87(2)(b). PO Nuñez stated that he had to go “Line of Duty” for twenty days as a result of his injuries.

The CCRB was unable to obtain PO Nuñez’s medical records. During his CCRB interview, PO Nuñez refused to sign the medical released form and on several occasions, the investigator attempted to obtain PO Nuñez’s Line of Duty paperwork from the 34th Precinct. However, these attempts were met with negative results.

Sgt. Juan Hernandez

Sgt. Hernandez was interviewed by the CCRB on April 29, 2005. (Encl. 18A-18B) On March 17, 2005, Sgt. Hernandez was assigned as the patrol supervisor for the 34th Precinct Robbery Apprehension

Module. Sgt. Hernandez performed his duties in uniform from 11:15 a.m. to 8:12 p.m. PO Nuñez acted as Sgt. Hernandez's partner on this day. Sgt. Hernandez has a detailed entry in his memo book regarding this incident. § 87(2)(g) (Encl. 17A-17C)

§ 87(2)(g)
§ 87(2)(b). Sgt. Hernandez testified that he did not respond to the § 87(2)(b) on this day.

PO Juan Rosario

PO Rosario was interviewed by the CCRB on May 31, 2005. (Encl. 20A-20B) On March 17, 2005, PO Rosario performed patrol duties in uniform from 2:00 p.m. to 11:35 p.m. PO Kevin Kelly acted as his partner on this day. In his memo book entries, PO Rosario indicated his assignment to the § 87(2)(b) (Encl. 19A-19B)

At approximately 6:00 p.m., an unidentified supervisor requested that PO Rosario respond to the § 87(2)(b) and stay with PO Nuñez, who had been injured during the course of § 87(2)(b)'s arrest. PO Rosario arrived at the hospital at approximately 6:15 p.m. PO Rosario stated that he stayed with PO Nuñez in a private room until an officer relieved him from his duty at 10:00 p.m. PO Rosario stated that he was the only officer accompanying PO Nuñez during this time. PO Rosario denied seeing § 87(2)(b) at the hospital. PO Rosario stated after returning to the stationhouse, he was assigned § 87(2)(b)'s arrest.

PO Rene Salcedo

PO Salcedo was interviewed by the CCRB on August 4, 2005. (Encl. 23A-23C) On March 17, 2005, PO Salcedo performed his duties in uniform within the confines of the 34th Precinct from 4:00 p.m. to 12:00 a.m. On this day, PO Salcedo was assigned to stationhouse security. PO Salcedo indicated in his memo book that at 7:40 p.m., he responded to the § 87(2)(b) to guard § 87(2)(b) (Encl. 22A-22B)

At approximately 7:40 p.m., PO Salcedo was instructed by an unidentified sergeant to respond to § 87(2)(b) to guard § 87(2)(b) and relieve the unidentified officer that was with him at the time. Upon arriving at the hospital, PO Salcedo observed PO Nuñez standing in a hallway inside the emergency room. PO Salcedo approached him and talked to him for approximately three minutes. PO Nuñez did not discuss § 87(2)(b)'s arrest with him. After this conversation, PO Salcedo proceeded to guard § 87(2)(b) who was in another area of the emergency room. PO Salcedo remained at the hospital until approximately 5:00 a.m., when he transported § 87(2)(b) to the stationhouse. PO Salcedo stated that he did not witness any interaction between § 87(2)(b) and PO Nuñez.

Medical Records

On § 87(2)(b), § 87(2)(b) was transported to the emergency room of § 87(2)(b) to be treated for the injury he sustained during this incident. § 87(2)(b) was diagnosed with a fractured humerus (upper arm bone) and was provided with Dilaudid and Vicodin to treat the pain in his shoulder. Excerpts from § 87(2)(b)'s medical records relevant to the present case have been included in this file. (Encl. 25A-25F)

Police Documents

Sprint report X07992

Sprint report X07992 indicates that on March 17, 2005, at approximately 4:14 p.m., Sgt. Hernandez and PO Nuñez arrested § 87(2)(b) at the corner of § 87(2)(b) and § 87(2)(b) in Manhattan. This report also indicates that at approximately 4:16 p.m., they requested an ambulance to meet them at the 34th Precinct stationhouse. (Encl. 26A-26B)

34th Precinct's Command Log entries regarding § 87(2)(b)'s arrest on March 17, 2005

The entries made in the Command Log regarding § 87(2)(b)'s arrest indicate that at approximately 4:13 p.m., he was arrested and charged with § 87(2)(b)

§ 87(2)(b). It indicated that at the time § 87(2)(b) was brought to the stationhouse, he complained of “pain to his left arm.” It also indicated that at 4:55 p.m., § 87(2)(b) was transported to the § 87(2)(b) along with PO Nuñez, who had sustained an injury to one of his arms. PO Woznicki escorted § 87(2)(b) and PO Nuñez to the hospital. (Encl. 27A)

Status of § 87(2)(b)'s criminal case

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)], § 87(2)(g)

CCRB History for § 87(2)(b)

§ 87(2)(b) does not have any prior CCRB complaints on file. (Encl. 4A)

CCRB History for Sgt. Juan Hernandez

This is Sgt. Hernandez's second CCRB complaint after being with the NYPD for twelve years. There are no substantiated allegations on his record. (Encl. 2A)

CCRB History for PO Fabio Nuñez

This is PO Nuñez's sixth CCRB complaint after being with the NYPD for five years. There are no substantiated allegations on his record. (Encl. 3A)

Conclusions and Recommendations

Officer Identification

At the time of his CCRB interview, § 87(2)(b) identified Sgt. Hernandez and PO Nuñez as the subject officers in this case.

Undisputed and Disputed Facts

It is undisputed that on March 17, 2005, Sgt. Hernandez and PO Nuñez approached and arrested § 87(2)(b) at the corner of § 87(2)(b) and § 87(2)(b) in Manhattan. § 87(2)(g)

Credibility Assessment

§ 87(2)(b)

§ 87(2)(g)

Sgt. Juan Hernandez and PO Fabio Nuñez

§ 87(2)(g)

Allegation A: Sgt. Juan Hernandez used physical force against § 87(2)(b)

Allegation B: PO Fabio Nuñez used physical force against § 87(2)(b)

§ 87(2)(b) claimed that at the time of his arrest PO Nuñez deliberately applied a great amount of pressure to his left shoulder in order to fracture it. PO Nuñez adamantly denied this allegation. § 87(2)(g)

§ 87(2)(b) The officers testified that § 87(2)(b) refused to comply with their request to place his hands behind his back and when they attempted to grab his arms to force him to do so, he began to flail them. § 87(2)(g)

§ 87(2)(b) Patrol Guide procedure 203-11 states, “Only that amount of force necessary to overcome resistance will be used in order to take a mentally ill or emotionally disturbed person into custody.” (Encl. 1A) § 87(2)(g)

Allegation C: PO Fabio Nuñez threatened § 87(2)(b) **with the use of force.**

§ 87(2)(b) claimed that PO Nuñez threatened to “break” his other arm inside the § 87(2)(b) emergency room. During the course of this investigation, several officers that were assigned to accompany PO Nuñez while at the hospital denied witnessing an argument between PO Nuñez and § 87(2)(b) PO Nuñez testified that his only interaction with § 87(2)(b) at the hospital was limited to asking him for his pedigree information in order to fill out the arrest forms. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: